

Appl. No. 10/529,800  
Amdt. Dated August 7, 2006  
Reply to Office Action of May 5, 2006

**REMARKS**

Claims 26-54 are pending in this application. By this amendment, Claims 1-25 have been canceled and Claims 26, 37, 38, 39, 46 and 48 have been amended. No new matter has been added to this application by these amendments. In view of the amendments above and the remarks to follow, reconsideration and allowance of this application are respectfully requested.

In the Office Action mailed May 5, 2006 (“the Office Action”), Claims 26-54 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. More particularly, Claims 26, 38, 39, 46 and 48 were rejected for including limitations which lacked antecedent basis and Claim 37 was rejected because positive structure to perform “rotation of the tool assembly” was not recited. Claims 26, 38, 39, 46 and 48 have been amended to remove the indefinite language identified by the Examiner. Further, Claim 37 has been amended to depend from Claim 28 and to recite that “the dynamic clamping member is supported in the tool assembly ...”. Thus, the recitation “rotation of the tool assembly” is believed to be fully supported by structure in the claims. In view of the amendments above, Applicant respectfully requests that the rejection of Claims 26-54 under 35 U.S.C. §112, second paragraph, be withdrawn.

In the Office Action, Claims 26, 27, 34, 38, 42-43 and 45-54 were rejected under 35 U.S.C. §102(e) over U.S. Patent No. 6,669,073 to Milliman et al (“Milliman”). Milliman discloses a surgical stapling apparatus having an articulating tool assembly 17 including a cartridge assembly 18 and an anvil assembly 20. An axial drive assembly 212 including a drive beam 266 and a working head 268 is movable in relation to anvil assembly 20 and cartridge assembly 18 to move anvil assembly 20 into approximation with cartridge assembly 18. A mounting assembly 202 is secured to a proximal end of tool assembly 17 to facilitate articulation

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of tool assembly 17 in relation to body portion 200.

Independent Claims 26 and 48 each recite a tool assembly which includes “a dynamic clamping member . . .” and a clamp member positioned adjacent a proximal end of the tool assembly which is movable from a retracted or first position to an advanced or second position to maintain a proximal end of an anvil assembly and a cartridge assembly in an approximated position or in juxtaposed alignment. Applicant respectfully submits that Milliman does not disclose or suggest a tool assembly which includes the combination of a clamp member and dynamic clamping member as claimed. More specifically, Milliman fails to disclose a clamp member which is movable from a first position to a second position to maintain the proximal end of the cartridge assembly and the anvil in approximation or in juxtaposed alignment.

In the Office Action, the Examiner states that Milliman discloses “a clamp member 202.” As discussed above, reference number 202 of Milliman identifies a mounting assembly for pivotally securing a tool assembly to the distal end of the body portion of Milliman’s apparatus. Mounting assembly 202 does not move between retracted and advanced positions. Nor does it maintain the cartridge and anvil assemblies in an approximated position. For at least these reasons, independent Claims 26 and 48 and dependent Claims 27, 34, 38 and 42-47 and dependent Claims 49-54 which depend therefrom, respectively, patentably define over Milliman.

In the Office Action, Claims 28-33, 35-37, 39-41 and 44 were rejected under 35 U.S.C. §103(a) over Milliman in view of U.S. Patent No. 5,690,269 to Bolanos et al. (“Bolanos”). The Examiner cited Bolanos to show “the concept of a drive member having a coaxial drive cable with an outer sheath 200 and a center rod 70 for the purpose of articulating an endoscopic portion” (see page 4 of the Office Action, lines 14-20). Each of Claims 28-33, 35-37, 39-41 and

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44 depends from Claim 26. Bolanos fails to cure the deficiencies of Milliman as discussed above with respect to Claim 26. For at least the reasons discussed above with respect to Claim 26, Applicant believes that Claims 28-33, 35-37, 39-41 and 44 are also in condition for allowance.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims pending in the application, namely Claims 26-54, are in condition for allowance. Should the Examiner feel that a telephone or personal interview may facilitate resolution of any remaining matters, he is respectfully requested to contact Applicant's attorney at the number indicated below.

Respectfully submitted,

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